

PDR NO. PD-0797-17

**IN THE
TEXAS COURT OF CRIMINAL APPEALS
AT AUSTIN, TEXAS**

FILED
COURT OF CRIMINAL APPEALS
3/7/2018
DEANA WILLIAMSON, CLERK

DAVID ARROYO,

Appellant/Respondent

VS.

THE STATE OF TEXAS,

Appellee/Petitioner

*From the Court of Appeals
For the Fourth Court of Appeals District of Texas
No. 14-15-00595-CR
And the 399th District Court of Bexar County
No. 2013CR8109*

**APPELLANT’S RESPONSE TO NOTICE OF LATE BRIEF AND
SECOND MOTION FOR EXTENSION OF TIME TO FILE BRIEF**

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

Now comes DAVID ARROYO, Appellant in the above styled and
numbered cause and files this Motion to Extend Time to file Appellant’s Response

Petitioner's Petition for Discretionary Review and in support would show the following:

I.

On August 16, 2015, the Appellant was convicted of six counts of indecency with a child in Cause No. 2013CR8109 in the Criminal District Court, 399th Judicial District of Bexar County, Texas, and sentenced to confinement for twenty years in Texas Department of Criminal Justice, Institutional Division and a \$5,000 fine, with counts one through five to run concurrently with each other and counts six to run consecutively to the others.

II.

The Appellant timely filed notice of appeal, and the appeal was styled David Arroyo vs. The State of Texas, Cause No. 14-15-00595-CR, in the Court of Appeals for the Fourth Court of Appeals District of Texas. The Fourth Court of Appeals issued its original opinion on May 24, 2017. On June 1, 2017, the State filed a motion for rehearing. On July 19, 2017, the court of appeals overruled the State's motion for rehearing, but it vacated its earlier judgment, withdrew its original opinion and issued a new judgment and opinion. The court of appeals affirmed appellant's convictions relating to touching K.E.'s genitals, but it reversed the trial court's judgments on counts two, four, and six, rendering acquittals.

II.

This Court granted State's Petition for Discretionary review on October 25, 2017, oral argument permitted. The State's brief was originally due with this Court by November 25, 2017. The Appellant's brief is due 30 days after the timely filing of the State's brief, which would have been December 25, 2017.

Appellant filed Notice of Appearance in this case on November 7, 2017. The State's brief in this case was filed early on November 8, 2017. Therefore, Appellant's deadline for filing a response brief date for timely filing became December 8, 2017. Appellant did not file a brief on this due date.

IV.

The Texas Court of Criminal Appeals granted Respondent's First Motion for Extension of Time to file the Response to Petitioner's Petition for Discretionary Review. This Court extended the time to file the Response and issued a due date of February 12, 2018, stating that no further extensions will be entertained.

II.

The undersigned attorney has two additional upcoming medical procedures and has previously discussed assistance with or substitution for completion of Appellant's Response and argument with attorney Ross Rodriguez. Due to the additional time delays incurred, Respondent asks this Court to extend the time

for filing it days after substituted counsel is appointed to file Appellant's Response.

V.

This extension of time is necessary to give the Appellant's attorney time to prepare its Brief to this Honorable Court. Appellant is requesting an extension of time from its currently date of February 12th, to file its brief. This extension of time is necessary to give the Appellant's attorney time to conclude preparation of its Brief to this Honorable Court.

Appellant's counsel has at all times during this matter exercised diligence in providing timely and professional conclusions in all matters currently in progress, and Appellant and expects to do the same in this Court. A thirty-day extension would enable counsel to do accomplish the same in this Court the other courts and matters to which counsel has commitments.

VI.

Lastly, Appellee would show that this request for an extension of time is not being sought for the purposes of delay but rather that justice may be done. The requested extension will not cause prejudice to any party.

WHEREFORE, PREMISES CONSIDERED, Appellant prays that this

Court grant this Motion to Extend Time to File Appellant's Brief and extend the deadline by 30 days after new counsel is appointed. Respondent then prays that this Court issue a new due date of forty-five days from the present date to February 12, 2018, and for such other and further relief as the Court may deem appropriate.

Respectfully submitted,

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Attorney for DAVID ARROYO

CERTIFICATE OF SERVICE

I certify that the above and foregoing Motion was sent to Bexar County Criminal District Attorney's Office attorneys for the State of Texas by e-filing, on the 5rd day of March 2018.

/s/ Andrea C. Polunsky
Andrea C. Polunsky